IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: O R D E R ::

D.B. CIVIL WRIT PETITION(PIL)NO.5063/2006

Mangu Khan & Anr.
Vs.
The State of Rajasthan & ors.

DATE OF ORDER :: 25-09-2007

:: P R E S E N T ::

HON'BLE THE CHIEF JUSTICE SHRI J.M. PANCHAL
HON'BLE SHRI JUSTICE BHANWAROO KHAN

Mr. Devendra Mahalana, for the petitioners.
Mr. S. Ladhrecha, Addl.G.A.
Mr. Pradeep Choudhary, for the respondent.

PER HON'BLE THE CHIEF JUSTICE MR. J.M. PANCHAL

By filing the instant public interest litigation under Article 226 of the Constitution, the two petitioners have prayed to issue an appropriate writ or order directing the respondents to remove the encroachment made in part of catchment area and to initiate proceedings against the tresspassers. The petitioners have further prayed to direct the respondents not to regularise the occupation of the land in question as well as to cancel the regularisation of illegal occupation made by the respondents.

The petitioners are residents of Deh Road, Nagaur. According to them, Khasra nos.511,520,521,522,524 and 527 forming part of gochar land and agor are encroached upon by the land brokers. The grievance made by the petitioners in the petition

is that they had submitted representations dated August 4, 2003, July 30, 2004, September 28, 2005 and October 15, 2005 to the authorities and requested them to remove the illegal encroachments on the khasras mentioned above but no action was taken by the authorities. According to the petitioners, in Khasra no.521 there exists water pond, known as 'Thambolai Nadi' but because of illegal encroachments, the people residing nearby are prevented from using the water for their daily use. The petitioners have averred that the authorities have removed the encroachment on Deh Road which is situated in Khasra no.527 but inspite of representation dated March 13, 2006, no further actions have been taken for removal of other encroachments made on other khasras. The petitioners have mentioned in the petition that On January 3, 1992, No Objection Certificate was issued by the Municipal Board, Nagaur in favour of one Rawat Khan to convert the land from agriculture to residential purpose which is illegal, whereas the Revenue Appellate Authority, Ajmer Camp Nagaur has regularised the illegal occupation of Rawat Khan vide judgment dated May 27, 1995 which is also illegal. Under the circumstances, the petitioners have filed the instant petition and claimed the reliefs to which reference is made earlier.

On service of notice, the respondent no.4 has filed affidavit in reply controverting the averments made in the petition. It is mentioned in the reply that lands forming part of the khasra numbers mentioned in the petition are under the Revenue Department and the Municipal Board has nothing to do with the same. It is further stated in the reply that the competent authority had permitted khasra no.527 to

be used for residential purpose after following the procedure which is not illegal at all. It is also mentioned in the reply that appropriate actions have been taken to remove the encroachments over Government and Municipal lands and pursuant to which encroachments have been removed. With reference to regularisation of the illegal encroachments, it is mentioned in the reply that the judicial order dated May 27, 2005 passed by the Revenue Appellate Authority is neither illegal nor erroneous, and therefore the said order regularising encroachment is not liable to be set aside.

It may be mentioned that the instant petition was listed for hearing before the Court on July 4, 2007 and after hearing the learned counsels for the parties, following orders was passed:

> "Learned counsel for the respondents wants time to file reply. Time prayed for is allowed.
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> Meanwhile, no construction shall be allowed to be commenced or continued in the land in question which is alleged to be Agor land (catchment area). It shall be responsibility of the Collector, Naguar to depute an officer not below the rank of S.D.O. to ensure the compliance of the aforesaid direction and make a factual report by the next date.
>
> Put up on 1st August, 2007 as prayed."

In view of the directions contained in order dated July 4, 2007, an additional affidavit has been filed on behalf of the respondents mentioning inter alia that in compliance of the order dated July 4, 2007, an inspection of land at Thamolai Nadi and its catchment area was made on July 21, 2007 as well as on July 22, 2007 and that after demarcation of the land,

the proceedings under Section 91 of the Rajasthan Land Revenue Act, 1956 were initiated to remove encroachments made by the tresspassers. What is mentioned in the additional affidavit is that thereafter the Sub Divisional Officer, Nagaur had communicated to the Collector by letter dated July 27, 2007 describing the complete facts and that the tresspassers have been evicted from the angore land of Thamolai Nadi after following due process of law.

The petitioners have filed reply to the additional affidavit mentioning inter alia that a wrong statement is made in the additional affidavit that the all encroachments over the agor land and Thambolai Nadi have been removed but as a matter of fact, till today the encroachers have continued the encroachment over the lands in question.

This Court has heard the learned counsels for the parties.

The contents of the additional affidavit would indicate that the tresspassers have been evicted from agor land and Thambolai Nadi after following the due process of law. The petition involves determination of highly disputed questions of facts which cannot be gone into by this Court while exercising powers under Article 226 of the Constitution. Further the reliefs claimed, if granted, would adversely affect several persons who are not impleaded as parties.

Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the respondents are directed to continue

to take appropriate action for the purpose of removing illegal encroachment.

For the foregoing reasons, the respondents are directed to continue to take appropriate action for the purpose of removing encroachments, if any, on the lands in question.

Subject to this direction, the petition fails and is dismissed. Notices are discharged. There shall be no order as to costs.

[BHANWAROO KHAN],J. [J.M.PANCHAL],.CJ.

Praveen